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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

NationsBank

November 18, 1998

Writer's Direct Dial Number

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: **EX PARTE**
CC docket No. 80-286 ;
CC docket No. 96-45,
CC docket No. 96-262;
CCB/CPD CC Docket No. 97-30 - Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic

Dear Ms. Salas:

Bank of America submits the attached letter in the above-referenced proceedings. The letter was submitted recently in a proceeding before the California Public Utilities Commission that addressed the payment of reciprocal compensation for services provided to Internet Service Providers ("ISPs").

The views expressed in that letter about the financing challenges faced by Competitive Local Exchange Carriers ("CLECs") are equally relevant to the Federal Communications Commission's ("FCC") current deliberations regarding the jurisdictional nature of switched, dial up calls to ISPs. The FCC's decision could have a substantial impact on CLECs' ability to access capital markets, and we ask the Commission to ensure that the emerging CLEC industry has the opportunity to provide the vigorous competition in the local exchange markets envisioned by the Telecommunications Act of 1996.

Eight copies of this letter, two for each of the above-cited proceedings, have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,

Gregory I. Meador
Managing Director

Enclosure

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Larry Strickling
James Schlichting
Phyllis Riggins

October 7, 1998

Via Facsimile and Federal Express
(415) 703-1758
Commissioner P. Gregory Conlon
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Dear Commissioner Conlon,

I write to you on behalf of the Bank of America (the "Bank") regarding Item 12 on the Commission's October 8, 1998 Agenda. As an important capital source to Competitive Local Exchange Carriers, ("CLCs"), the Bank has an interest in the Commission's prompt resolution of the pending dispute regarding the payment of reciprocal compensation for services provided to Internet Service Providers (ISPs) by CLCs. Accordingly, the Bank urges the Commission to adopt Item 12 as currently drafted and distributed pursuant to Cal. Pub. Util. Code §311.5 (the "Escutia Draft") at its October 8 agenda meeting.

We urge prompt resolution for the following reasons:

- CLCS need substantial capital to invest in switches, fiber optic cable and facilities before they are able to provide service to the public. Because the cash flow from those operations will not be produced immediately, CLCs have difficulty obtaining financing on the same terms as the incumbent local carriers (ILECs).

- Wall Street views the CLC segment of the telecommunications marketplace as highly volatile. At one end of the spectrum, CLCs invite optimism because of the potential for new customers and company consolidations. On the other hand, the CLCs lack of cash flow and the ILEC efforts to impede market entry by new competitors engenders pessimism. *In 1998, approximately $7.5BB in capital (high yield bonds) has been raised for CLCs but this market is currently unavailable due to recent disruptions in the bond market.*

- As a result of the unavailability of funds in the bond markets, CLCs must increasingly rely on bank financing. The Federal Reserve and the Office of Comptroller of the Currency which regulate lenders such as the Bank, limit the sources of funds a bank may rely upon for repayment of a loan. Typically, the Bank's primary source of funds for loan repayment is future available cash flow. A secondary source is the value of the collateral-Accounts Receivable and fixed assets. Given the start-up nature of CLCs and the lack of current cash flow, the Bank must rely more heavily on the secondary source when approving loans to CLCs.

- The uncertainty surrounding reciprocal compensation caused by the ILECs refusal to pay these monies to CLCs and the subject of Agenda Item 12 makes valuing a CLC's Accounts Receivable, and therefore evaluating its ability to qualify for a loan, both difficult and confusing. Until the Commission reaches a decision on this matter, ILECs that are withholding payment may arbitrarily change their estimates of the percentage of total traffic that terminates to an ISP, potentially increasing the amount of reciprocal compensation that they will refuse to pay to the CLC pending resolution of this matter. Moreover, until the Commission rules, it is unclear if and when the ILECs will pay these revenues to the CLC. Finally, because the disputed reciprocal compensation payments are becoming an increasingly larger percentage of a CLC's total receivables, the Bank is finding it increasingly difficult to fund loans based on an accurate estimate of a CLC's Accounts Receivable.

- Finally, Bank loans of the size typically required by a CLC, in the range of $100- $250 Million, are syndicated to several banks. A syndicating bank requires clear communication on this issue and few are familiar with the regulatory issues pending before the Commission. Therefore, the potential for a successful syndication and the likelihood that a CLC will obtain necessary capital is reduced by the current uncertainty.

As shown above, until the Commission rules on this matter, CLCs access to the capital markets and therefore their ability to compete vigorously in the California telecommunications marketplace is severely constrained. We urge the Commission to recognize the substantial impact its decision will have on CLCs access to the capital markets and, in order to prevent any further harm created by the present uncertainty, adopt the Escutia Draft at its October 8 meeting. Please do not hesitate to call me if the Bank can provide you with any additional information. I can be reached at (415) 622-8572.

Sincerely,

Richard E Bryson
Managing Director

cc: President Richard A. Bilas
Commissioner Jessie J. Knight
Commissioner Henry M. Duque
Commissioner Josiah L. Neeper